

SERVER TECHNOLOGY, INC. (a Nevada	)	3:11-cv-00068-ECR-WGC
corporation),	)	
	)	
Plaintiff,	)	<u>Order</u>
	)	
vs.	)	
	)	
AMERICAN POWER CONVERSION	)	
CORPORATION (a Massachusetts	)	
corporation),	)	
	)	
Defendant.	)	
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Plaintiff designs and manufactures products relating to computerized data center power management, including intelligent power distribution systems. (Compl. ¶ 4 (#1).) Plaintiff owns five patents: 1) United States Patent No. 7,368,830 entitled "POLYPHASE POWER DISTRIBUTION AND MONITORING APPARATUS, issued May 6, 2008; 2) U.S. Patent No. 7,414,329 entitled "POLYPHASE POWER DISTRIBUTION AND MONITORING APPARATUS," issued August 19, 2008 ("the '329 Patent"); 3) U.S. Patent No. 7,777,365 entitled "POLYPHASE POWER DISTRIBUTION

1 AND MONITORING APPARATUS," issued August 17, 2010; 4) U.S. Patent  
2 No. 7,268,998 entitled "GANGED OUTLET POWER DISTRIBUTION APPARATUS,"  
3 issued September 11, 2007; and 5) U.S. Patent No. 7,774,443 entitled  
4 "POWER MANAGER CONFIGURATION UPLOAD AND DOWNLOAD METHOD AND SYSTEM  
5 FOR NETWORK MANAGERS," issued August 10, 2010 (collectively, these  
6 five patents are hereinafter referred to as "the STI Patents"). (Id.  
7 ¶¶ 5-9.) Plaintiff marks its products with their patent numbers.  
8 (Id. ¶ 11.) Defendant makes and sells computerized data center  
9 power management devices, power distribution products, and other  
10 network infrastructure and network power management products and  
11 systems. (Id. ¶ 12.)

12 On January 28, 2011, Plaintiff filed a complaint (#1) stating  
13 five causes of action for infringement, one for each of the STI  
14 Patents. Plaintiff filed an amended complaint (#22) on April 28,  
15 2011. Defendant filed its answer and counterclaim (#25) on May 12,  
16 2011. Plaintiff answered (#28) the counterclaim on June 6, 2011.

17 Defendant filed a Motion to Dismiss (#15) on April 11, 2011.  
18 Plaintiff responded (#23) on April 28, 2011, and Defendant replied  
19 (#24) on May 9, 2011.

20 On November 1, 2011, Plaintiff filed an unopposed Motion for  
21 Leave to File Second Amended Complaint (#35).

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## **II. Discussion**

24 Pursuant to Federal Rule of Civil Procedure 15(a), leave to  
25 amend is to be "freely given when justice so requires." In general,  
26 amendment should be allowed with "extreme liberality." Owens v.

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1 Kaiser Found. Health Plan, Inc., 244 F.3d 708 712 (9th Cir. 2001)  
2 (quoting Morongo Band of Missions Indians v. Rose, 893 F.2d 1074,  
3 1079 (9th Cir. 1990)). However, if factors such as undue delay, bad  
4 faith, dilatory motive, undue prejudice, or futility of amendment  
5 are present, leave to amend may properly be denied in the district  
6 court's discretion. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d  
7 1048, 1051-52 (9th Cir. 2003). The futility analysis determines  
8 whether the proposed amendment would survive a motion to dismiss  
9 pursuant to Rule 12(b)(6). Miller v. Rykoff-Sexton, Inc., 845 F.2d  
10 209, 214 (9th Cir. 1988).

11 Plaintiff seeks to amend the complaint to add three claims  
12 based on three of the STI Patents already named in the original  
13 complaint and one claim based on another of its patents not  
14 previously named. The Court finds that none of the factors listed  
15 as reasons for denying leave to amend a complaint are present here.  
16 The deadline for amending the pleadings has not yet passed, and  
17 Plaintiff has consulted with Defendant and the motion is unopposed.  
18 As leave is to be freely given, Plaintiff will be given an  
19 opportunity to submit a second amended complaint.

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21 **III. Conclusion**

22 Plaintiff timely seeks to amend the complaint for valid  
23 purposes, and Defendant has not opposed Plaintiff's motion (#35).

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25 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiff's Motion for  
26 Leave to File Second Amended Complaint (#35) is **GRANTED**. Plaintiff

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1 shall have fourteen (14) days within which to file its amended  
2 complaint.

3 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (#15)  
4 is **DENIED** as moot.

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7 DATED: December 16, 2011.

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9 UNITED STATES DISTRICT JUDGE